

000167

REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO1. CERTIFICATE NUMBER 202  
(FOR AUDITOR'S USE ON 9/17TO: CITY ATTORNEY  
2. FROM (ORIGINATING DEPARTMENT): DEVELOPMENT SERVICES  
3. DATE: August 20, 2007  
RECEIVED  
CITY CLERK'S OFFICE  
07 AUG 31 PM 12:00  
SAN DIEGO, CALIF.

## 4. SUBJECT:

Shaw Lorenz, Project No. 126895

5. PRIMARY CONTACT (NAME, PHONE, &amp; MAIL STA.):

Tim Daly (619) 446-5356, MS-501

6. SECONDARY CONTACT (NAME, PHONE, &amp; MAIL STA.):

Leslie Goossens (619) 446-5223, MS-501

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



## 8. COMPLETE FOR ACCOUNTING PURPOSES

| FUND           |        |  |  |  | 9. ADDITIONAL INFORMATION / ESTIMATED COST:   |
|----------------|--------|--|--|--|---|
| DEPT.          | 1317   |  |  |  | No cost to the City. All costs are recovered through a deposit account funded by the applicant. |
| ORGANIZATION   | 1776   |  |  |  |   |
| OBJECT ACCOUNT | 4022   |  |  |  |   |
| JOB ORDER      | 420669 |  |  |  |   |
| C.I.P. NUMBER  | N/A    |  |  |  |   |
| AMOUNT         |        |  |  |  |   |

## 10. ROUTING AND APPROVALS

| ROUTE (#) | APPROVING AUTHORITY | APPROVAL SIGNATURE | DATE SIGNED | ROUTE (#)  | APPROVING AUTHORITY | APPROVAL SIGNATURE | DATE SIGNED |
|-----------|---------------------|--------------------|-------------|--|---------------------|--------------------|-------------|
| 1         | ORIG. DEPT          | PATTI BOEKAMP      | 8/24/07     | 8  | DEPUTY CHIEF        | WILLIAM ANDERSON   | 8/24/07     |
| 2         | EAS                 | TERI HUNTER        | 8/24/07     | 9  | COO                 |                    |             |
| 3         | CPC/PLANNING        |                    |             | 10   | CITY ATTORNEY       | SHIRLEY EDWARDS    | 8-28-07     |
| 4         | CFO                 |                    |             | 11   | ORIG. DEPT          | BOB MANIS          | 8/24/07     |
| 5         |                     |                    |             | DOCKET COORD: _____ COUNCIL LIAISON _____  |                     |                    |             |
| 6         |                     |                    |             | <input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION |                     |                    |             |
| 7         |                     |                    |             | <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: _____   |                     |                    |             |

## 11. PREPARATION OF:

☒ RESOLUTIONS☐ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

- 1) Council resolution stating for the record that the final EIR No. 2873 has been reviewed and considered prior to approving the project.
- 2) Council resolution approving the staying dates and periods of time for Project No. 2873, Shaw Lorenz approvals, Vesting Tentative Map No. 25674, Planned Development Permit No. 25675, Site Development Permit No. 25676, Coastal Development Permit No. 25677, and Neighborhood Use Permit No. 76234.

## 11A. STAFF RECOMMENDATIONS:

Approve Resolutions.

## 12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 1

COMMUNITY AREA(S): Del Mar Mesa

**ENVIRONMENTAL IMPACT:** This activity is covered under Project No. 2873, Shaw Lorenz. The activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Therefore, the activity is not a separate project for purposes of CEQA review pursuant to State CEQA Guidelines Section §15060(c)(3).

## CITY CLERK INSTRUCTIONS:

- Public noticing is required.
- Return copies of each resolution to Tim Daly, MS-501.
- Council action requires a majority vote.

## EXECUTIVE SUMMARY SHEET

RECEIVED  
CITY CLERK'S OFFICE

DATE REPORT ISSUED: August 27, 2007

REPORT NO.:

07 AUG 31 PM 12:08

ATTENTION: Council President and City Council

SAN DIEGO, CALIF.

ORIGINATING DEPARTMENT: Development Services Department

SUBJECT: Shaw Lorenz, Project No. 126895

COUNCIL DISTRICT(S): 1

STAFF CONTACT: Tim Daly, [Tdaly@sandiego.gov](mailto:Tdaly@sandiego.gov), (619) 446-5356REQUESTED ACTION:

Request to stay (toll) the expiration date for the Shaw Lorenz project approvals while the Decision and Injunction precluding Pardee Homes from obtaining an Extension of Time or subsequent ministerial approvals for the Shaw Lorenz Project remains in effect.

STAFF RECOMMENDATION:

Approve a resolution to stay (toll) the expiration date for the Shaw Lorenz project approvals while the Decision and Injunction precluding Pardee Homes from obtaining an Extension of Time or subsequent ministerial approvals for the Shaw Lorenz Project remains in effect.

EXECUTIVE SUMMARY:

The Shaw Lorenz project for residential development in the Del Mar Mesa Community Planning area was approved by City Council on May 11, 2004. The project approvals consist of Vesting Tentative Map no. 25674, Planned Development Permit no. 25675, Site Development Permit no. 25676, Coastal Development Permit no. 25677, and Neighborhood Use Permit no. 76234. Pardee Homes, the Owner/Permittee for the Shaw Lorenz project, has applied for an Extension of Time (EOT) on the aforementioned approvals; however, on October 13, 2006, United States District Judge Rudi M. Brewster in the Southern District of California rendered a decision and issued a Decision and Injunction in the case entitled, "*Southwest Center for Biological Diversity, et al. vs. Jim Bartel, Anne Badgley, and Gale Norton, and Building Industry Legal Defense Foundation, et al.*," Case No. 98-CV-2234-B(JMA)[Attachment 1]. As a result of the issuance of the Decision and Injunction, Pardee Homes' Shaw Lorenz Project, as well as other development projects, has been precluded from obtaining further discretionary or ministerial approvals from the City (Attachment 2).

Pardee Homes has requested that the City Council consider a resolution to stay (toll) the expiration date for the Shaw Lorenz project approvals while the Decision and Injunction precluding Pardee Homes from obtaining an EOT or subsequent ministerial approvals for the Shaw Lorenz Project remains in effect.

The State Subdivision Map Act – Government Code Sections 66452.6 and 66452.12 authorizes the City to stay the running of the expiration date for the project approvals under these conditions (Attachment 3). Pardee Homes' request for a stay of the Shaw Lorenz project approvals is consistent with the Subdivision Map Act.

This resolution to stay (toll) the expiration date for the Shaw Lorenz Project No. 2873 approvals is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional

environmental review. Therefore, the activity is not a separate project for purposes of CEQA review pursuant to State CEQA Guidelines Section §15060(c)(3).

FISCAL CONSIDERATIONS:

All costs associated with the processing of this project are recovered by a deposit account maintained by the applicant.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

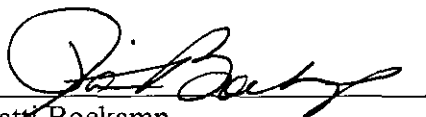
None

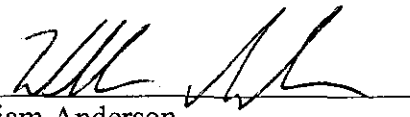
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Pardee Homes, Owner

  
Patti Boekamp  
Acting Director  
Development Services Department

  
William Anderson  
Acting Deputy Chief of Land Use and  
Economic Development

- ATTACHMENTS: 1. Southwest Center for Biological Diversity, et al. vs. Jim Bartel, Anne Badgley, and Gale Norton, and Building Industry Legal Defense Foundation, et al.,” Case No. 98-CV-2234-B(JMA).  
2. The City Attorney of San Diego letter, MSCP Court Order – Shaw Lorenz, Project No. 2873, November 17, 2006.  
3. State Subdivision Map Act, Government Code Sections 66452.6 and 66452.12.

000171

# DETERMINATION OF ENVIRONMENTAL EXEMPTION

Pursuant to the California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO

Project No.: 126895

Date: July 20, 2007

Action/Permit(s): Process 5 Hearing

**Description of Activity:** Shaw Lorenz resolution to stay (toll) the expiration date for the Shaw Lorenz project – Pardee Homes has requested that the City Council consider a resolution to stay (toll) the expiration date for the Shaw Lorenz project approvals while the Decision and Injunction in the case entitled, "*Southwest Center for Biological Diversity, et al. vs. Jim Bartel, Anne Badgley, and Gale Norton, and Building Industry Legal Defense Foundation, et al.*," Case No. 98-CV-2234-B(JMA), precluding Pardee Homes from obtaining an EOT or subsequent ministerial approvals for the Shaw Lorenz Project remains in effect. The property is located on the southwest quadrant of Del Mar Mesa Rd and Carmel Mountain Road within the Del Mar Mesa Community Plan area and Council District 1.

**Location of Activity:** The property is located on the southwest quadrant of Del Mar Mesa Rd and Carmel Mountain Road within the Del Mar Mesa Community Plan area and Council District 1.

## (CHECK BOXES BELOW)

1. ☒ This activity is EXEMPT FROM CEQA pursuant to:
- ☒ Section 15060(c) (3) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).
2. ☐ This project is EXEMPT FROM CEQA pursuant to State CEQA Guidelines Section checked below:

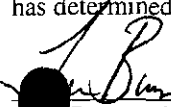
## ARTICLE 19 of GUIDELINES CATEGORICAL EXEMPTIONS (Incomplete list)

| Section                        | Short Name  |
|--------------------------------|---|
| <input type="checkbox"/> 15301 | Existing Facilities   |
| <input type="checkbox"/> 15302 | Replacement or Reconstruction                                       |
| <input type="checkbox"/> 15303 | New Construction or Conversion<br>of Small Structures               |
| <input type="checkbox"/> 15304 | Minor Alterations to Land   |
| <input type="checkbox"/> 15305 | Minor Alteration in Land Use  |
| <input type="checkbox"/> 15306 | Information Collection  |
| <input type="checkbox"/> 15311 | Accessory Structures  |
| <input type="checkbox"/> 15312 | Surplus Government Property Sales                                   |
| <input type="checkbox"/> 15315 | Minor Land Divisions  |
| <input type="checkbox"/> 15317 | Open Space Contracts or Easements                                   |
| <input type="checkbox"/> 15319 | Annexation of Existing Facilities<br>and Lots for Exempt Facilities |
| <input type="checkbox"/> 15325 | Transfer of Ownership of Interest<br>in Land to Preserve Open Space |
| <input type="checkbox"/> Other |   |

## ARTICLE 18 of GUIDELINES STATUTORY EXEMPTIONS (Incomplete list)

| Section                        | Short Name                             |
|--------------------------------|--|
| <input type="checkbox"/> 15261 | Ongoing Project                        |
| <input type="checkbox"/> 15262 | Feasibility and Planning Studies       |
| <input type="checkbox"/> 15265 | Adoption of Coastal Plans and Programs |
| <input type="checkbox"/> 15268 | Ministerial Projects                   |
| <input type="checkbox"/> 15269 | Emergency Projects                     |
| <input type="checkbox"/> Other |  |

It is hereby certified that the City of San Diego  
has determined the above activity to be exempt:

  
Tim Bumgardner, Senior Planner  
Environmental Analysis Section

Distribution:

Exemption or Project file  
Responsible Departments:  
Tim Daly, Development Project Manager  
Exemption File

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

WHEREAS, the City Council by Resolution No. R-299205, adopted on May 11, 2004, certified Master Environmental Impact Report No. 95-0353 (Project No. 2873), a copy of which is on file in the Development Services Department; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, in connection with the previous consideration and approval of Planned Development Permit No. 25675, Site Development Permit No. 25676, Coastal Development Permit No. 25677, Neighborhood Use Permit No. 76234, and Vesting Tentative Map No. 25674 for the Shaw Lorenz project [Shaw Lorenz Project Approvals], the City Council considered the issues discussed in Master Environmental Impact Report No. 95-0353 (Project No. 2873); NOW, THEREFORE,


BE IT RESOLVED, by the Council of the City of San Diego, stating for the record that the approval of staying the Shaw Lorenz Project Approvals, is a subsequent discretionary approval of the Project addressed in the Master Environmental Impact Report and therefore not a separate project under CEQA Guideline sections 15060(c)(3) .

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, stating for the record that the information contained in the final Master Environmental Impact Report, including

any comments received during the public review process, has been previously reviewed and considered by this Council and it is determined that this subsequent discretionary approval staying the Shaw Lorenz Project Approvals does not involve change in circumstances, project changes, or new information of substantial importance which would warrant any additional environmental review.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
Shirley R. Edwards  
Chief Deputy City Attorney

SRE:pev  
08/28/07  
Or.Dept:DSD  
R-2008-164  
MMS #5220

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

WHEREAS, on May 11, 2004, the Council of the City of San Diego approved Vesting Tentative Map No. 25674, Planned Development Permit No. 25675, Site Development Permit No. 25676, Coastal Development Permit No. 25677, and Neighborhood Use Permit No. 76234 [the Shaw Lorenz Project Approvals] for the Shaw Lorenz Project, a residential development in the Del Mar Mesa Community Planning area within the City of San Diego [City]. Pardee Homes, a California Corporation, is the Owner/Permittee for the Shaw Lorenz Project; and

WHEREAS, on October 13, 2006, United States District Judge Rudi M. Brewster in the Southern District of California issued a Decision and Injunction in the case entitled, *Southwest Center for Biological Diversity, et al. vs. Jim Bartel, Anne Badgley, and Gale Norton, and Building Industry Legal Defense Foundation, et al.*, Case No. 98-CV-2234-B(JMA) [the Injunction]; and

WHEREAS, the Injunction immediately enjoined the City of San Diego's incidental take permit dated July 18, 1997 issued by the United States Fish and Wildlife Service [USFWS] for pending and future development projects. This ruling enjoins (1) any and all pending applications for development of land containing vernal pool habitat; (2) those projects where the City has granted permission, but the development has not yet physically begun to destroy the vernal pool habitat; and (3) any further development where the permittee is presently engaged in the destruction of vernal pool habitat; and

WHEREAS, as a result of the issuance of the Injunction, Pardee is enjoined from proceeding with the Shaw Lorenz Project and has been unable to obtain from City a grading

permit or final map for the Shaw Lorenz Project. As a consequence, on March 27, 2007, Pardee applied for a stay of the expiration of the Shaw Lorenz Project Approvals pursuant to the provisions of Sections 125.0461 and 126.0111 of the City's Land Development Code and pertinent provisions of the California Subdivision Map Act [Sections 66453.5 and 66452.6 of the California Government Code]; and

WHEREAS, it is likely the Injunction will not be "lifted" in the near future; and

WHEREAS, the Shaw Lorenz Project Approvals granted by the City include dates and periods of time within which a final map must be recorded and permits acted upon; and

WHEREAS, Pardee Homes timely filed an application with the City requesting approval of a stay on the running of periods of time within which a final map must be recorded and permits acted upon as set forth in the Shaw Lorenz Project Approvals; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, City approval of such request is consistent with the Injunction, Section 66452.6, Section 66452.12, Section 66453.5, and Section 66863.9 of the California Government Code, and authorized by the Subdivision Map Act of the State of California; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego, that this City Council approval will stay the expiration of the Shaw Lorenz Project Approvals until the Injunction is




vacated or the Injunction or any modification(s) thereof is no longer applicable to the Shaw Lorenz Project. In no event shall this stay exceed the applicable statutory time limits of the Subdivision Map Act.

BE IT FURTHER RESOLVED that at such time as City determines the Injunction, and any modification(s) thereto, no longer apply to the Shaw Lorenz Project, the City will terminate the Stay through City Council action. If the City determines that the Injunction no longer applies to the Shaw Lorenz Project, City shall notify Pardee Homes in writing.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
Shirley R. Edwards  
Chief Deputy City Attorney

SRE:pev  
08/28/07  
Or.Dept:DSD  
R-2008-165  
MMS #5220

SHIRELY EDWARDS  
CHIEF DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO  
**MICHAEL J. AGUIRRE**  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

November 17, 2006

Mr. Ted Shaw  
Latitude 33  
4933 Paramount Drive, Second Floor  
San Diego, CA 92121

Dear Mr. Shaw:

*MSCP Court Order - Shaw Lorenz, Project No. 2873*

On October 13, 2006, the U.S. District Court, Southern Region, issued a decision in the case of *Southwest Center for Biological Diversity v. Jim Bartel, et al*, Case No. 98-CV-2234-B(JMA). This decision addresses the adequacy of the City's Multiple Species Conservation Program and Subarea Plan under the Endangered Species Act [ESA] Section 10 Incidental Take Permitting Process as it relates to Vernal Pool Habitat and Vernal Pool species.

Under this ruling, the City of San Diego as a Defendant in this action, has been expressly ordered to do the following:

The Court immediately enjoins the City of San Diego's Incidental Take Permit (No. PRT-830421, dated July 18, 1997, and issued by the United States Fish and Wildlife Service) for those pending and future development projects that "take" any of the seven vernal pool species—San Diego fairy shrimp (*Branchinecta sandiegonensis*); Riverside fairy shrimp (*Streptocephalus woottoni*), Otay mesa mint (*Pogogyne nudiuscula*); California Orcutt grass (*Orcuttia californica*); San Diego button celery (*Eryngium aristulatum* var. *parishii*); San Diego mesa mint (*Pogogyne abramsii*); and spreading navarretia (*Navarretia fossalis*)—as defined and governed by the Endangered Species Act. 16 U.S.C. Sections 1531-44.

Specifically, the Court enjoins

Mr. Ted Shaw

-2-

November 17, 2006


- (1) any and all pending applications for development of land containing vernal pool habitat;
- (2) those projects where the City has granted permission, but the development has not yet physically begun to destroy vernal pool habitat; and
- (3) any further development where the permittee is presently engaged in the destruction of vernal pool habitat.

The Court orders Defendant City of San Diego to serve a copy of this Order forthwith on all applicants and permittees affected by the injunction as noted above. The Court will not stay this immediate injunction.

In addition, under this ruling, the U.S. Fish & Wildlife Service has been ordered to re-initiate consultation with the City of San Diego looking toward revisions of the City of San Diego's Incidental Take Permit "at least on the seven vernal pool species, and for further action not inconsistent with this decision."

In compliance with this Court Order, the City of San Diego is notifying you that your project, Shaw Lorenz, Project No. 2873, is affected by this injunction. Enclosed is a copy of the Court's Order. To the extent that you believe your project falls outside the scope of this Court Order, please provide, in writing, any and all information supporting your position.

MICHAEL J. AGUIRRE, City Attorney

By   
for Shirley Edwards  
Chief Deputy City Attorney

SE:pev  
Enclosure

RECEIVED  
CITY CLERK'S OFFICE  
07 AUG 31 PM 12:08  
SAN DIEGO, CALIF.

000181

**COPY**

1 MICHAEL J. AGUIRRE, City Attorney  
GEORGE F. SCHAEFER, Deputy City Attorney.  
2 California State Bar No. 139399  
SHIRLEY R. EDWARDS, Chief Deputy City Attorney  
3 California State Bar No. 151399  
Office of the City Attorney  
4 Civil Division  
1200 Third Avenue, Suite 1100  
5 San Diego, California 92101-4100  
Telephone: (619) 533-5800  
6 Facsimile: (619) 533-5856

7 Attorneys for Cross-Defendant  
City of San Diego

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 SOUTHWEST CENTER FOR  
11 BIOLOGICAL DIVERSITY, et al.,

12 Plaintiffs,

13 v.

14 JIM BARTEL, ANNE BAGLEY, and  
GALE NORTON,

15 Defendants,

16 BUILDING INDUSTRY LEGAL  
17 DEFENSE FOUNDATION, et al.,

18 Intervening Defendants.

19 BUILDING INDUSTRY LEGAL  
20 DEFENSE FOUNDATION, et al.,

21 Cross-Complainants,

22 UNITED STATES FISH AND  
23 WILDLIFE SERVICE; et al.,

24 Cross-Defendants,

25 and

26 SOUTHWEST CENTER FOR  
BIOLOGICAL DIVERSITY, et al.,

27 Intervening Defendants.  
28

) Case No. 98-CV-2234-B (JMA)

) CITY OF SAN DIEGO'S NOTICE  
) OF COMPLIANCE WITH COURT'S  
) INJUNCTION

) Judge: Hon. Rudi M. Brewster  
) Courtroom No. 2

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1 A. INTRODUCTION

2 On October 13, 2006 this Court rendered a final decision and injunction. The City of San  
3 Diego ("City") gives notice to this Court and all parties of record of the City's compliance with  
4 the injunction.

5 This Court in October immediately enjoined the City's Incidental Take Permit (No. PRT-  
6 830241, dated July 18, 1997, issued by the United States Fish and Wildlife Service ("USFWS"))  
7 for those pending and future development projects that "take" any of the seven identified vernal  
8 pool species. Order at page 60, lines 1-15 ("60:1-15"). This Court stated in its Order:

9 Specifically, the Court enjoins (1) any and all pending applications for  
10 development of land containing vernal pool habitat; (2) those projects where the  
11 City has granted permission, but the development has not yet physically begun to  
destroy the vernal pool habitat; and (3) any further development where the  
permittee is presently engaged in the destruction of vernal pool habitat.

12 Order at 60:16-20. The Court ordered the City to serve a copy of the Order forthwith on all  
13 applicants and permittees affected by the injunction. Order at 60:20-22.

14 B. INTERIM COMPLIANCE

15 In compliance with the Court's injunction, the City conferred with USFWS officials who  
16 later produced a list entitled, "Review of City of San Diego Vernal Pool Projects/Permits in  
17 Relation to the City of San Diego MSCP Ruling." Assistant Deputy Director Robert J. Manis,  
18 Environmental Analysis Section, Land Development Review, Development Services Department,  
19 City of San Diego, reviewed this list and included additional projects. Exhibit A to this  
20 Compliance Notice includes a copy of the most recent version of this combined list.<sup>1</sup> A letter  
21 from the City was mailed thereafter to the agent for each project on the City's list by certified  
22  
23

24  
25 <sup>1</sup> Any party to this litigation who believes the list is incomplete should notify counsel for the City  
26 of the identity of other applicants or permittees who should have been included on the list. The  
27 City maintains a vernal pool site inventory comprising more than 2,500 sites within the City's  
jurisdiction that may assist in identifying additional projects affected by the Court's injunction.  
Because this file is too large to file with Court electronically, the City will make it available upon  
request of any party.  
28

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1 United States mail. *See* Exhibit B to this Compliance Notice.<sup>2</sup>

2 Each letter sent to an applicant or permittee states, "To the extent that you believe your  
3 project falls outside the scope of this Court Order, please provide, in writing, any and all  
4 information supporting your position." Responses received are included at Exhibit C. The City  
5 will continue to identify other projects that also may be affected by this Court's injunction. As  
6 these projects are identified, the City will mail similar letters.

7 **C. FUTURE COMPLIANCE ISSUES**

8 The projects identified on the City's list are at various stages of development: (1) some  
9 may be at the application stage; (2) others may not have started development but received all  
10 necessary permits to proceed; and (3) others may have received all necessary permits to proceed  
11 and are beginning or completing development. It is believed these projects share the following  
12 characteristics: The projects are on property containing vernal pool habitat and have been issued,  
13 have applied for, or will be applying for, the issuance of a Section 7 biological opinion or Section  
14 10 permit from USFWS relating to vernal pool species.

15 Although the City's MSCP contains language relating to vernal pools and provides some  
16 mitigation for vernal pool habitat, the City has not used and does not use its MSCP to authorize  
17 the taking of vernal pool species. However, it is believed USFWS has, in some instances,  
18 incorporated by reference the City's MSCP into its Section 7 biological opinions, including  
19 MSCP references concerning vernal pool habitat or species. The projects identified on the  
20 USFWS's list were or are in the process of being issued biological opinions authorizing take  
21 under USFWS' biological opinion or permitting process. *See* Exhibit D. However, this Court has  
22 not enjoined USFWS from issuing any more Section 7 biological opinions for projects within the  
23 City. The Court also has not required USFWS to amend or revoke the Section 7 biological  
24 opinions it already has issued until such time as the City's MSCP is revised with respect to vernal  
25 pool species.

26  
27 <sup>2</sup> A few of the letters were returned unclaimed. Those letters were resent earlier this month.  
28 Letters were also sent earlier this month to representatives of projects that were only recently  
added to the list.

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1 The City regulates land development under the provisions of the City's Land  
2 Development Code (San Diego Municipal Code ["SDMC"], Chapters 11 - 14). For purposes of  
3 complying with this Court's injunction, the City relies upon definitions in the City's Land  
4 Development Code. Under the provisions of the Code, an "applicant" is defined as:

5 [A]ny person who has filed an application for a permit, map, or other matter and  
6 that is the record owner of the real property that is the subject of the permit, map,  
7 or other matter; the record owner's authorized agent; or any other person who can  
8 demonstrate a legal right, interest, or entitlement to the use of the real property  
9 subject to the application; including any person who has an approved and executed  
Disposition and Development Agreement with the Redevelopment Agency of the  
City of San Diego.

10 SDMC § 113.0102. An application is deemed complete, but not yet approved, when the City has  
11 determined the application includes all information, materials, fees and deposits required. SDMC  
12 § 113.0102. A "permit holder" is "an applicant who has been granted a permit, or the applicant's  
13 successor, or the person using the property that is subject to the permit." SDMC § 113.0102.

14 A "development" is defined in the Land Development Code as:

15 [T]he act, process, or result of dividing a parcel of land into two or more parcels;  
16 of erecting, placing, constructing, reconstructing, converting, establishing, altering,  
17 maintaining, relocating, demolishing, using, or enlarging any building, structure,  
18 improvement, lot, or premises; of clearing, grubbing, excavating, embanking,  
filling, managing brush, or agricultural clearing on public or private property  
including the construction of slopes and facilities incidental to such work; or of  
disturbing any existing vegetation.

19 SDMC § 113.0102.

20 A "development permit" is defined under the Land Development Code as:

21 [A] permit issued pursuant to Land Development Code Chapter 12, Article 6.  
22 Development permits include the following: Neighborhood Use Permits,  
23 Conditional Use Permits, Neighborhood Development Permits, Site Development  
24 Permits, Planned Development Permits, Coastal Development Permits, and  
Variances.

25 SDMC § 113.0102.

26 A "construction permit" is defined under the Land Development Code as:  
27  
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1 [A] permit issued pursuant to Land Development Code Chapter 12, Article 9.  
2 Construction permits include the following: Building Permits, Electrical Permits,  
3 Plumbing/Mechanical Permits, Demolition/Removal Permits, Grading Permits,  
Public Right-of-Way Permits, and Sign Permits.

4 SDMC § 113.1020.

5 To comply with the Court's injunction, the City will do the following: For properties  
6 where vernal pool habitat or species are present, the City will refrain from processing and/or  
7 approving any applications for development, including, but not limited to, entitlements (e.g.,  
8 requests for rezoning) and permits (e.g., development permits, grading permits, construction  
9 permits). For example, this would mean that if a ten-acre parcel has a vernal pool habitat  
10 anywhere on site, no application will be processed and/or approved because a vernal pool habitat  
11 is somewhere on the parcel. In compliance with this Court's injunction (and consistent with  
12 California Government Code §§ 65944 and/or 64942(b)), an application will not be deemed  
13 complete until the applicant has obtained a Section 7 biological opinion or Section 10 Incidental  
14 Take Permit for vernal pool species from USFWS that does not refer back to the City's MSCP in  
15 relation to vernal pool habitat and vernal pool species.

16 For properties where vernal pool habitat or species are present, the City will continue to  
17 notify existing City permit holders by letter that they are affected by this Court's Order.  
18 Consistent with this Court's injunction, permits issued by the City will not be valid if they were  
19 issued in reliance upon the permit holder obtaining from USFWS a valid Section 7 biological  
20 opinion or Section 10 Incidental Take Permit and the biological opinion or Section 10 permit  
21 refers back to or relies upon the MSCP in relation to vernal pool species or habitat.

22 The Building Industry Defense Foundation, National Association of Home Builders,  
23 California Building Industry Association, Building Association of San Diego and Pardee  
24 Construction Company ("Builder Intervenor"), recently indicated that they intend to file a motion  
25 to clarify the Court's injunction. (Doc. 272). The Builder Intervenor suggests that the City has  
26 misinterpreted this Court's Order. To the extent a permit holder believes that he or she is not  
27 subject to the Court's Order, the City hopes that the Builder Intervenor's motion for clarification  
28 will result in an Order of clarification that provides guidance. The City believes that its strict




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1 interpretation of this Court's decision and injunction is consistent with the requirements of the  
2 Endangered Species Act.

3 This Court also remanded this case to the USFWS with instructions to re-initiate  
4 consultation toward revisions of the City of San Diego's Incidental Take Permit (at least on the  
5 seven vernal pool species), or for further action that is not inconsistent with the Court's decision.  
6 Order at 60:15-18. Formal consultation has not yet been initiated by the USFWS. Nevertheless,  
7 the City will continue to comply as detailed above until the City has revised, and the USFWS has  
8 approved, the City's MSCP consistent with this Court's ruling.

9 Dated: December 15, 2006

MICHAEL J. AGUIRRE, City Attorney

10  
11 By:   
12 Shirley Edwards  
13 Chief Deputy City Attorney  
14 E-mail: SEdwards@sandiego.gov

15 By: s/ George F. Schaefer  
16 George F. Schaefer  
17 Deputy City Attorney  
18 E-mail: GSchaefer@sandiego.gov

19 Attorneys for City of San Diego  
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DECLARATION OF SERVICE

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; and that I served the following document(s):

- CITY OF SAN DIEGO'S NOTICE OF COMPLIANCE WITH COURT'S INJUNCTION
- EXHIBITS A-D TO CITY OF SAN DIEGO'S NOTICE OF COMPLIANCE WITH COURT'S INJUNCTION

on the individuals listed below in the manner indicated.

Electronic Mail

I served the following by electronic mail at the e-mail addresses listed below:

- Marco Antonio Gonzalez  
marco@coastlawgroup.com
- William E Halle  
bhalle@hewittoneil.com lpuzio@hewittoneil.com
- Neil Levine  
nlevine@earthjustice.org llovett@earthjustice.org
- Thomas C Stahl  
Thomas.Stahl@usdoj.gov efile.dkt.civ@usdoj.gov
- U S Attorney CV  
Efile.dkt.civ@usdoj.gov

United States Mail

I served the following by placing a copy in a sealed envelope and placing it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practices, at the addresses listed below:

Jane P Davenport  
Wildlife and Marine Resources Section  
Environment and National Resources Divis  
U S Department of Justice  
Ben Franklin Station P O Box 7369  
Washington DC, 20044-7369

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1 **Stephen M Macfarlane**  
United States Department of Justice  
2 Environmental Natural Resource Division  
3 501 I Street  
Suite 9-700  
4 Sacramento, CA 95814-2322

5 **Martin McDermott**  
Us Department of Justice  
6 Environmental Defense Section  
PO Box 23986  
7 Washington, DC 20026-3986

8 **Keith W Rizzardi**  
9 Wildlife and Marine Resources Section  
Environment and National Resources Divis  
10 U S Department of Justice  
Ben Franklin Station P O Box 7369  
11 Washington DC, 20044-7369

12 **Daniel J Rohlf**  
13 Pacific Environmental Advocacy Center  
10015 South West Terwilliger Boulevard  
14 Portland, OR 97219

15 Executed: December 15, 2006 at San Diego, California.

16  
17 s/ George F. Schaefer  
18 **GEORGE F. SCHAEFER**  
E-mail: GSchaefer@sandiego.gov  
19  
20  
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**COPY**

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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**  
9

10 **SOUTHWEST CENTER FOR**  
11 **BIOLOGICAL DIVERSITY, et al.,**

12 **Plaintiffs,**

13 **vs.**

14 **JIM BARTEL, ANNE BADGLEY, and**  
15 **DIRK KEMPTHORNE,**

16 **Defendants,**

17 **and**

18 **BUILDING INDUSTRY LEGAL**  
19 **DEFENSE FOUNDATION, et al.,**

20 **Intervening Defendants.**

21 **and related cross complaint.**

**CASE NO. 98-CV-2234-B(JMA)**

**ORDER DENYING**  
**INTERVENING DEFENDANTS'**  
**MOTION TO CLARIFY SCOPE**  
**OF INJUNCTION**

**[Doc. No. 277]**

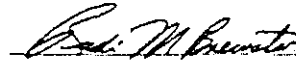
22 Now before the Court is the Intervening Defendants' motion to clarify the scope of the  
23 injunction in this Endangered Species Act case. The Court ordered the motion submitted  
24 without oral argument. Civil Local R. 7.1. The Court has carefully considered the various  
25 issues raised by the parties, and now *DENIES* the motion to clarify.

26 The Intervening Defendants seek exceptions for specific construction projects because  
27 they contend that the City of San Diego is construing the injunction expansively and broader  
28 than the Court intended it to be applied. The Court's injunction was specific and carefully  
worded to enjoin any further destruction of vernal pool species or their habitat. Am. Dec. &

1 Inj. at 55. The Court discerns no error in the City's interpretation of the injunction or  
2 application to projects that may adversely affect vernal pool species or their habitat. The  
3 seven vernal pool species are protected by the prohibition against take under Endangered  
4 Species Act and the governing regulations. The Court had invalidated the Incidental Take  
5 Permit as to those seven species for specific flaws in the analysis of the Fish and Wildlife  
6 Service.

7 Consequently, the Court also denies the ex parte application for "crateo indication."<sup>1</sup>

8 DATED: March 15, 2007

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10   
11 Hon. Rudi M. Brewster  
12 United States Senior District Judge  
13  
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21

cc: all parties

22 'Intervening Defendants filed a notice of appeal to the original order, and an amended  
23 notice of appeal to the amended decision. Ordinarily, the filing of a notice of appeal divests  
24 the district court of jurisdiction over the substance of a case. Because the Court has not  
25 altered the scope of the original injunction, this Court is not taking any action that would  
26 disrupt the appellate process. *See Kern Oil & Refining Co. v. Tenneco Oil Co.*, 840 F.2d 730,  
27 734 (9th Cir. 1988).

28 Plaintiffs challenge the nature of the motion and whether it is timely; however,  
because it lacks merit the Court need not discuss the proper characterization of the motion.  
*Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 527 (9th Cir. 1983).

Federal Defendants' raise another jurisdictional issue when they contend that the case  
will be moot. Their description of the potential mootness should certain acts occur in the  
future demonstrates that the case is not, at this time, moot. *E.g., United States v. W.T. Grant*  
*Co.*, 345 U.S. 629, 632 (1953).

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CALIFORNIA CODES

GOVERNMENT CODE

SECTION 66452-66452.13

66452. (a) A **tentative** map shall be filed with the clerk of the advisory agency or, if there is no advisory agency, with the clerk of the legislative body, or with any other officer or employee of the local agency as may be designated by local ordinance.

(b) A vesting **tentative** map shall be filed and processed in the same manner as a **tentative** map except as otherwise provided by this division or by a local ordinance adopted pursuant to this division.

(c) At the time a vesting **tentative** map is filed it shall have printed conspicuously on its face the words "Vesting **Tentative** Map."

66452.1. (a) If the advisory agency is not authorized by local ordinance to approve, conditionally approve or disapprove the **tentative** map, it shall make its written report on the **tentative** map to the legislative body within 50 days after the filing thereof with its clerk.

(b) If the advisory agency is authorized by local ordinance to approve, conditionally approve, or disapprove the **tentative** map, it shall take that action within 50 days after the filing thereof with its clerk and report its action to the subdivider.

(c) The local agency shall comply with the time periods referred to in Section 21151.5 of the Public Resources **Code**. The time periods specified in subdivisions (a) and (b) shall commence after certification of the environmental impact report, adoption of a negative declaration, or a determination by the local agency that the project is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources **Code**.

66452.2. (a) If there is an advisory agency which is not authorized by local ordinance to approve, conditionally approve or disapprove the **tentative** map, at the next regular meeting of the legislative body following the filing of the advisory agency's report with it, the legislative body shall fix the meeting date at which the **tentative** map will be considered by it, which date shall be within 30 days thereafter and the legislative body shall approve, conditionally approve, or disapprove the **tentative** map within that 30-day period.

(b) If there is no advisory agency, the clerk of the legislative body shall submit the **tentative** map to the legislative body at its next regular meeting which shall approve, conditionally approve or disapprove that map within 50 days thereafter.

(c) The local agency shall comply with the time periods referred to in Section 21151.5 of the Public Resources **Code**. The time periods specified in subdivisions (a) and (b) shall commence after certification of the environmental impact report, adoption of a negative declaration, or a determination by the local agency that the project is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources **Code**.

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66452.3. Any report or recommendation on a **tentative** map by the staff of the local agency to the advisory agency or legislative body shall be in writing and a copy thereof served on the subdivider and on each tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to any hearing or action on such map by such advisory agency or legislative body. Pursuant to Section 66451.2, fees may be collected from the subdivider for expenses incurred under this section.

66452.4. (a) If no action is taken upon a **tentative** map by an advisory agency that is authorized by local ordinance to approve, conditionally approve, or disapprove the **tentative** map or by the legislative body within the time limits specified in this chapter or any authorized extension thereof, the **tentative** map as filed, shall be deemed to be approved, insofar as it complies with other applicable requirements of this division and any local ordinances, and it shall be the duty of the clerk of the legislative body to certify or state his or her approval.

(b) Once a **tentative** map is deemed approved pursuant to subdivision (a), a subdivider shall be entitled, upon request of the local agency or the legislative body, to receive a written certification of approval.

66452.5. (a) (1) The subdivider, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, may appeal from any action of the advisory agency with respect to a **tentative** map to the appeal board established by local ordinance or, if none, to the legislative body.

(2) The appeal shall be filed with the clerk of the appeal board, or if there is none, with the clerk of the legislative body within 10 days after the action of the advisory agency from which the appeal is being taken.

(3) Upon the filing of an appeal, the appeal board or legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of a request filed by the subdivider or the appellant. If there is no regular meeting of the legislative body within the next 30 days for which notice can be given pursuant to Section 66451.3, the appeal may be heard at the next regular meeting for which notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. Within 10 days following the conclusion of the hearing, the appeal board or legislative body shall render its decision on the appeal.

(b) (1) The subdivider, any tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, or the advisory agency may appeal from the action of the appeal board to the legislative body. The appeal shall be filed in writing with the clerk of the legislative body within 10 days after the action of the appeal board from which the appeal is being taken.

(2) After the filing of an appeal, the legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of the request filed by the subdivider or the

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appellant. If there is no regular meeting of the legislative body within the next 30 days for which notice can be given pursuant to Section 66451.3, the appeal may be heard at the next regular meeting for which notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. Within 10 days following the conclusion of the hearing, the legislative body shall render its decision on the appeal.

(c) (1) If there is an appeal board and it fails to act upon an appeal within the time limit specified in this chapter, the decision from which the appeal was taken shall be deemed affirmed and an appeal therefrom may thereupon be taken to the legislative body as provided in subdivision (b) of this section. If no further appeal is taken, the **tentative** map, insofar as it complies with applicable requirements of this division and any local ordinance, shall be deemed approved or conditionally approved as last approved or conditionally approved by the advisory agency, and it shall be the duty of the clerk of the legislative body to certify or state that approval, or if the advisory agency is one which is not authorized by local ordinance to approve, conditionally approve, or disapprove the **tentative** map, the advisory agency shall submit its report to the legislative body as if no appeal had been taken.

(2) If the legislative body fails to act upon an appeal within the time limit specified in this chapter, the **tentative** map, insofar as it complies with applicable requirements of this division and any local ordinance, shall be deemed to be approved or conditionally approved as last approved or conditionally approved, and it shall be the duty of the clerk of the legislative body to certify or state that approval.

(d) (1) Any interested person adversely affected by a decision of the advisory agency or appeal board may file an appeal with the legislative body concerning any decision of the advisory agency or appeal board. The appeal shall be filed with the clerk of the legislative body within 10 days after the action of the advisory agency or appeal board that is the subject of the appeal. Upon the filing of the appeal, the legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of a request filed by the subdivider or the appellant. If there is no regular meeting of the legislative body within the next 30 days for which notice can be given pursuant to Section 66451.3, the appeal may be heard at the next regular meeting for which notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. The hearing may be a public hearing for which notice shall be given in the time and manner provided.

(2) Upon conclusion of the hearing, the legislative body shall, within 10 days, declare its findings based upon the testimony and documents produced before it or before the advisory board or the appeal board. The legislative body may sustain, modify, reject, or overrule any recommendations or rulings of the advisory board or the appeal board and may make any findings that are not inconsistent with the provisions of this chapter or any local ordinance adopted pursuant to this chapter.

(e) Each decision made pursuant to this section shall be supported by findings that are consistent with the provisions of this division and any local ordinance adopted pursuant to this division.

(f) Notice of each hearing provided for in this section shall be sent by United States mail to each tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to the hearing. The notice requirement of this subdivision shall be deemed satisfied if



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the notice complies with the legal requirements for service by mail. Pursuant to Section 66451.2, fees may be collected from the subdivider or from persons appealing or filing an appeal for expenses incurred pursuant to this section.

66452.6. (a) (1) An approved or conditionally approved **tentative** map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months. However, if the subdivider is required to expend one hundred seventy-eight thousand dollars (\$178,000) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the **tentative** map, excluding improvements of public rights-of-way which abut the boundary of the property to be subdivided and which are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved **tentative** map by 36 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the **tentative** map more than 10 years from its approval or conditional approval. However, a **tentative** map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final **maps** that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the **tentative** map.

(2) Commencing January 1, 2005, and each calendar year thereafter, the amount of one hundred seventy-eight thousand dollars (\$178,000) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to **tentative** and vesting **tentative maps** whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

X (b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the **tentative** map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency which approved or conditionally approved the **tentative** map denies, the existence or application of a development moratorium to the **tentative** map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

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(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the **tentative** map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved **tentative** map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the **tentative** map shall be filed with the legislative body without first processing a new **tentative** map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the **tentative** map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved **tentative** map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve **tentative maps** for a period or periods not exceeding a total of five years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Prior to the expiration of an approved or conditionally approved **tentative** map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the **tentative** map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action prior to expiration of the **tentative** map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the **tentative** map, and that other public agency fails or refuses to convey the property

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interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the **tentative** map, if evidence was included in the public record that the public agency which owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency which owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the **tentative** map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency which owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

66452.8. (a) Commencing at a date not less than 60 days prior to the filing of a **tentative** map pursuant to Section 66452, the subdivider or his or her agent shall give notice of the filing, in the form outlined in subdivision (b), to each person applying after that date for rental of a unit of the subject property immediately prior to the acceptance of any rent or deposit from the prospective tenant by the subdivider.

(b) The notice shall be as follows:

"To the prospective occupant(s) of

\_\_\_\_\_  
(address)

The owner(s) of this building, at (address), has filed or plans to file a **tentative** map with the (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative project). No units may be sold in this building unless the conversion is approved by the (city, county, or city and county) and until after a public report is issued by the Department of Real Estate. If you become a tenant of this building, you shall be given notice of each hearing for which notice is required pursuant to Sections 66451.3 and 66452.5 of the **Government Code**, and you have the right to appear and the right to be heard at any such hearing.

\_\_\_\_\_  
(signature of owner or owner's agent)

\_\_\_\_\_  
(dated)

I have received this notice on \_\_\_\_\_.

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(prospective tenant's

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signature)"

(c) Failure by a subdivider or his or her agent to give the notice required in subdivision (a) shall not be grounds to deny the conversion. However, if the subdivider or his or her agent fails to give notice pursuant to this section, he or she shall pay to each prospective tenant who becomes a tenant and who was entitled to the notice, and who does not purchase his or her unit pursuant to subdivision (d) of Section 66427.1, an amount equal to the sum of the following:

(1) Actual moving expenses incurred when moving from the subject property, but not to exceed one thousand one hundred dollars (\$1,100).

(2) The first month's rent on the tenant's new rental unit, if any, immediately after moving from the subject property, but not to exceed one thousand one hundred dollars (\$1,100).

The requirements of this subdivision constitute a minimum state standard. However, nothing in this subdivision shall be construed to prohibit any city, county, or city and county from requiring, by ordinance or charter provision, a subdivider to compensate any tenant, whose tenancy is terminated as the result of a condominium, community apartment project, or stock cooperative conversion, in amounts or by services which exceed those set forth in paragraphs (1) and (2) of this subdivision. In the case of such a requirement by any city, county, or city and county, a subdivider who meets the compensation requirements of the local ordinance or charter provision shall be deemed to satisfy the requirements of this subdivision.

66452.9. (a) Pursuant to the provisions of subdivision (a) of Section 66427.1, the subdivider shall give notice 60 days prior to the filing of a **tentative** map pursuant to Section 66452 in the form outlined in subdivision (b), to each tenant of the subject property.

(b) The notice shall be as follows:

"To the occupant(s) of

\_\_\_\_\_  
(address)

The owner(s) of this building, at (address), plans to file a **tentative** map with the (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative project). You shall be given notice of each hearing for which notice is required pursuant to Sections 66451.3 and 66452.5 of the **Government Code**, and you have the right to appear and the right to be heard at any such hearing.

\_\_\_\_\_  
(signature of owner or owner's agent)

\_\_\_\_\_  
(date)"

The written notices to tenants required by this section shall be deemed satisfied if the notices comply with the legal requirements

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for service by mail.

66452.10. A stock cooperative, as defined in Section 11003.2 of the Business and Professions **Code**, or a community apartment project, as defined in Section 11004 of the Business and Professions **Code**, shall not be converted to a condominium, as defined in Section 783 of the Civil **Code**, unless the required number of (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and mortgagees of each recorded mortgage in the cooperative or project, as specified in the bylaws, or other organizational documents, have voted in favor of the conversion. If the bylaws or other organizational documents do not expressly specify the number of votes required to approve the conversion, a majority vote of the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and mortgagees of each recorded mortgage in the cooperative or project shall be required. Upon approval of the conversion as set forth above and in compliance with subdivision (e) of Section 1351 of the Civil **Code**, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the cooperative or project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances or other documents, a majority of owners in the cooperative or project shall be required to execute the conveyances and other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the cooperative or project. The provisions of Section 66499.31 shall not apply to a violation of this section.

66452.11. (a) The expiration date of any **tentative** subdivision map or parcel map for which a **tentative** map has been approved that has not expired on the date that the act that adds this section becomes effective shall be extended by 24 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.6 or 66463.5.

(c) Any legislative, administrative, or other approval by any agency of the State of California that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 24 months if this approval has not expired on the date that the act that adds this section becomes effective.

66452.12. (a) Any permit issued by a local agency in conjunction with a **tentative** subdivision map for a planned unit development shall expire pursuant to Section 65863.9.

(b) Conditions or requirements for the issuance of a building permit or equivalent permit may be imposed pursuant to Section 65961.

66452.13. (a) The expiration date of any **tentative** or vesting **tentative** subdivision map or parcel map for which a **tentative** map or vesting **tentative** map has been approved, that has not expired on or before the date the act that adds this section becomes effective

shall be extended by 12 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.11, 66452.6, or 66463.5.

(c) Any legislative, administrative, or other approval by any state agency that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 12 months if this approval has not expired on the date that the act that adds this section becomes effective. This extension shall be in addition to any extension provided for in Section 66452.11.